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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,014	03/15/2004	John Stewart Wenstrand	10040095-1	1019

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AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

EXAMINER

PYO, KEVIN K

ART UNIT PAPER NUMBER

2878

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,014

Applicant(s)

WENSTRAND ET AL.

Examiner

Kevin Pyo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44, 47, 48 and 51-56 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 20-43 and 52-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 11-19, 44, 46-48, 50, 51 and 56 is/are rejected.
- 7) ☒ Claim(s) 2 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-6, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nielsen et al (5,835,083).

Regarding claim 1, Nielsen et al shows in Fig.2B and 6 the following elements of applicant's invention: a) an imager (290, in view of col.1, lines 39-40, the Dual Purkinje Image Eyetracker can be utilized in the device of Nielsen) and eye detection processing for detecting light received by the imager from a human eye, said eye detection processing being configured to generate an output indicative of determination of detection said human eye (col.2, lines 29-30); and a controller (255) enabled to switch said device among a plurality of power consumption states in response to said output of said eye detection processing, said controller being configured to execute **at least one of** a first conditional response and a second conditional response, wherein said first conditional response in which said device is switched from a power up state to a lower power consumption state upon passage of a first time period without detecting a human eye (col.6, lines 40-44).

Regarding claim 3, Nielsen et al discloses at least three power consumption states (power down, power save and power up) and discloses that an eyetracker is used to control power to an electrical device such as a computer display screen so that power consumption is reduced when a

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user's eyes and therefore a user's attention are not directed to the device (col.6, lines 40-44; abstract, lines 1-4).

Regarding claim 4, Nielsen et al shows in Fig.3 the device is switched from power save state (310) to power down state (330).

Regarding claim 5, Nielsen et al shows in Fig.3 the device is switched from power save state (310) to power up state (320).

Regarding claim 6, Nielsen et al shows in Fig.3 the device is switched from power down state (330) to power up state (320).

Regarding claims 11 and 12, the limitations therein are shown in Fig.2A.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-17, 44, 46-48 and 50 rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al in view of Ando et al (4,768,088).

Regarding claim 44, Nielsen et al shows in Figs.2B and 6 passive control of a device including switching said device among a plurality of power consumption states on a basis of both of a first conditional response and a second conditional response, wherein (a) said first conditional response is one in which said device is switched from a power up state to a lower

consumption state upon passage of a first time period (T in Fig.6) without detecting an eye (an eyetracker is used to control power to an electrical device such as a computer display screen so that power consumption is reduced when a user's eyes and therefore a user's attention are not directed to the device; col.6, lines 40-44); and (b) said second conditional response is one in which said device is switched from a power-up state upon detection of an eye (col.6, lines 47-50). Although the device of Nielsen et al does not disclose the features of controlling its device in view of detections of eye blinking pattern, the use of eye blinking pattern detection for controlling the operation of electrical devices is well known in the art as disclosed by Ando et al (col.14, line 33-col.16, line 49), and it would have been obvious to one of ordinary skill in the art to modify the device of Nielsen et al to include the feature of eye blinking pattern detection in view of the desire to provide the more sophisticated operation capability without requiring any significant movement of a user's body.

Regarding claim 46, Nielsen et al discloses at least three power consumption states (power down, power save and power up) and discloses that an eyetracker is used to control power to an electrical device such as a computer display screen so that power consumption is reduced when a user's eyes and therefore a user's attention are not directed to the device (abstract, lines 1-4).

Regarding claim 47, Nielsen et al shows in Fig.3 the device is switched from power save state (310) to power down state (330).

Regarding claim 48, Nielsen et al shows in Fig.3 the device is switched from power save state (310) to power up state (320).

Regarding claims 13-17 and 50, Ando shows in Figs.3e-3g the operation of electrical devices of Ando is controlled on the basis of results of detections of an eye blinking pattern (col.14, line 33-col.16, line 49).

5. Claims 19 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al in view of Kochis et al (6,259,084).

Regarding claims 19 and 56, Nielsen et al shows in Fig.2a a battery powered portable computer (200) comprising an imager (230). Although Nielsen et al does not specifically mention that its imager is sampled in a non-continuous basis, such a sampling scheme is well known in the art as disclosed by Kochis et al (col.1, lines 60-67; col.2, lines 55-61) and it would have been obvious to one of ordinary skill in the art to modify the device of Nielsen et al to utilize a sampling scheme of Kochis et al in view of the desire to extend a battery life in the portable computer of Nielsen et al.

6. Claims 7, 18 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al.

Regarding claim 7, Nielsen et al discloses in col.6, lines 40-46 a first time period is set by a user. It would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust a first time period since it has been held that the provision of adjustability, where needed, involves only routine skill in the art.

Regarding claims 18 and 51, the feature of recognizing a correlation between a particular person and a detected eye and controlling a device based on the recognition is well known in the

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art and it would have been obvious to one of ordinary skill in the art to utilize the recited correlation feature in Nielsen in view of the desire to provide the ability to identify an user operating the device.

Allowable Subject Matter

7. Claims 2 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 2, the prior art fails to disclose or make obvious a control system for a device comprising, in addition to the other recited features of the claim, a controller is configured to execute both of the recited first and second condition responses, wherein the second conditional response comprising the feature of adjusting a first time period on the basis of historical data occurrences as recited in claim 1.

Regarding claim 8, the prior art fails to disclose or make obvious a control system for a device comprising, in addition to the other recited features of the claim, a control algorithm adaptively increases a first time period on a basis of historical data indicating repeated occurrence of switching by a controller.

9. Applicant's arguments filed 1/17/2006 have been fully considered but they are not persuasive.

Applicant argues that claim 1 has been amended to incorporate the subject matter of original claim 8 and the amendment to claim 1 overcomes the 102 rejection of the claim made in view of Nielsen et al. However, the Examiner disagrees with this argument. The amended claim 1 recites in lines 8-9 the limitation “said controller being configured to execute **at least one of** a first conditional response and a second conditional response” (the emphasis added). It should be noted that the limitation of claim 8 is incorporated as the part of a second conditional response and Nielsen et al still read on the broadly recited limitation of claim 1. It should be noted that it is the claims that define the claimed invention, and it is the claims, not the specification, that are anticipated or unpatentable.

Applicant’s arguments regarding the 102 rejection in view of Ando are deemed to be moot since the 102 rejection based on Ando have been withdrawn.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Pyo whose telephone number is (571) 272-2445. The examiner can normally be reached on Mon-Fri (with flexible hour), First Mon. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin Pyo
Primary Examiner
Art Unit 2878

Pkk
4/3/06